

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW KATZ,

Plaintiff,

v.

DAVID KATZ,

Defendant.

CASE NO. C22-5040JLR

ORDER DENYING MOTION
FOR ATTORNEYS' FEES

Before the court is Defendant David Katz's motion for attorneys' fees. (Mot. (Dkt. # 48).) Plaintiff Matthew Katz, who proceeds *pro se* and *in forma pauperis* in this action, has not responded to David's¹ motion. (*See generally* Dkt.) The court has considered David's motion, all materials submitted in support of the motion, the relevant

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¹ For ease of reference, the court refers to the members of the Katz family by their first names in this order. In doing so, the court means no disrespect.

1 portions of the record, and the governing law. Being fully advised,² the court DENIES
 2 David's motion for attorneys' fees.

3 On November 28, 2022, the court granted David's motion for summary judgment
 4 on most of Matthew's claims; ordered Matthew to show cause why the court should not
 5 grant summary judgment in David's favor with respect to Matthew's remaining claims
 6 for elder abuse and intentional infliction of emotional distress claims; and denied David's
 7 initial request for attorneys' fees pursuant to RCW 4.84.185. (11/28/22 Order (Dkt.
 8 # 42).) RCW 4.84.185 provides, in relevant part:

9 In any civil action, the court having jurisdiction may, upon written findings
 10 by the judge that the action, counterclaim, cross-claim, third party claim, or
 11 defense was frivolous and advanced without reasonable cause, require the
 12 nonprevailing party to pay the prevailing party the reasonable expenses,
 including fees of attorneys, incurred in opposing such action, counterclaim,
 cross-claim, third party claim, or defense.

13 RCW 4.84.185. In its summary judgment order, the court noted that to award fees and
 14 costs under this statute, it must determine that the entire lawsuit is "frivolous and
 15 advanced without reasonable cause," rather than just one or more claims therein.
 16 (11/28/22 Order at 27 (quoting *Kilduff v. San Juan Cnty.*, 453 P.3d 719, 728 (Wash.
 17 2019)).) A frivolous action under RCW 4.84.185 "is one that cannot be supported by any
 18 rational argument on the law or facts." (*Id.* (quoting *Hanna v. Margitan*, 373 P.3d 300,
 19 308 (Wash. Ct. App. 2016)).) The court denied David's request for attorneys' fees

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 21 ² David does not request oral argument on his motion (*see* Mot. at 1), and the court
 22 concludes that oral argument would not be helpful to its disposition of the motion, *see* Local
 Rules W.D. Wash. LCR 7(b)(4).

1 because it “[could]not conclude that Matthew’s lawsuit as a whole [was] frivolous and
2 advanced without reasonable cause.” (*Id.*)

3 Matthew did not respond to the court’s order to show cause. (*See generally* Dkt.)
4 He did, however, move for reconsideration of the court’s November 28, 2022 order
5 granting summary judgment on his fraud claims. (Recons. Mot. (Dkt. # 43).) The court
6 denied Matthew’s motion for reconsideration; granted summary judgment in David’s
7 favor on the two claims that remained at issue; and entered final judgment. (12/8/22
8 Order (Dkt. # 45); 12/9/22 Order (Dkt. # 46); Judgment (Dkt. # 47).)

9 David now moves a second time for an award of attorneys’ fees.³ He again asserts
10 that he is entitled to an award of fees pursuant to RCW 4.84.185 and argues for the first
11 time that he is entitled to an award of \$200 in statutory fees pursuant to RCW 4.84.080.
12 (*See generally* Mot.)

13 At the outset, the court can easily dispose of David’s request for fees under RCW
14 4.84.185. Nothing in David’s motion changes the court’s view that Matthew’s lawsuit as
15 a whole is neither frivolous nor advanced without reasonable cause. (*See* 11/28/22 Order
16 at 26-27; Mot. at 3-4.) That Matthew has named David as a defendant in a separate
17 lawsuit regarding the estate of Bernard Katz—Matthew’s brother and David’s father—
18 has no bearing on whether *this* case was frivolous. Matthew’s decision not to respond to
19 the court’s November 28, 2022 order to show cause may very well have been a

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21 ³ David’s motion also includes a request for costs. (*See* Mot. at 3-4.) David subsequently
22 filed a motion for a bill of costs. (*See* Cost. Mot. (Dkt. # 50).) The court will address David’s
request for costs when it rules on his motion for a bill of costs. *See* Local Rules W.D. Wash.
LCR 54(d)(1).

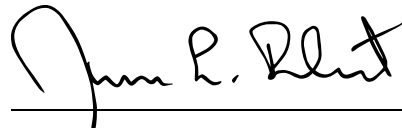
1 reasonable strategic choice in light of the court's explanation of why his elder abuse and
2 intentional infliction of emotional distress claims were susceptible to summary judgment.
3 (See 11/28/22 Order at 19-20, 23-26.) And Matthew has a right to file an appeal of the
4 court's summary judgment orders. David's renewed request for attorneys' fees pursuant
5 to RCW 4.84.185 is, therefore, DENIED.

6 The court also denies David's request for statutory attorneys' fees pursuant to
7 RCW 4.84.080. That statute provides that "[w]hen allowed to either party, costs to be
8 called the attorney fee, shall be as follows: . . . [i]n all actions where judgment is
9 rendered, two hundred dollars." RCW 4.84.080. RCW 4.84.080 does not, however,
10 apply to this action. Jurisdiction in this court is based upon the diversity of the parties.
11 (See Am. Compl. (Dkt. # 17) ¶¶ 6-8 (alleging diversity jurisdiction under 28 U.S.C.
12 § 1332 because Matthew and David are domiciled in separate states).) Federal courts
13 sitting in diversity apply state substantive law and federal procedural law. *Gasperini v.*
14 *Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996). The taxation of costs
15 under RCW 4.84.080 is procedural. See RCW 4.84.090 (listing taxable costs under
16 Washington law, including the "costs to be called the attorney fee" described in RCW
17 4.84.080). Because taxation of costs is procedural, federal law governs the taxation of
18 costs in this diversity jurisdiction case. See *Bertelsen v. Harris*, No. CV-04-5135-LRS,
19 2007 WL 9717425, at *1 (E.D. Wash. Sept. 6, 2007) (so holding); *VTL-LA Tr. of Vuong*
20 *Thi Lan-La Fam. Tr. Year 2005 v. Bloomfield*, No. C05-5779RJB, 2006 WL 8456086, at
21 *3 (W.D. Wash. May 18, 2006) (same). Federal law does not allow for the taxation of
22 attorneys' fees as a cost item. See 28 U.S.C. § 1920 (listing taxable costs under federal

1 law). As a result, because David is not entitled to taxation of the statutory attorneys' fee
2 as a cost item, the court DENIES David's request for fees under RCW 4.84.080.

3 In sum, for the foregoing reasons, David's motion for attorneys' fees (Dkt. # 48) is
4 DENIED.

5 Dated this 17th day of January, 2023.

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8 JAMES L. ROBART
9 United States District Judge
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